UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AGRIUM U.S. INC. and ROYSTER-CLARK, INC., Defendants.	)	Civil Action No.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Agrium U.S. Inc. ("Agrium U.S.") and Royster-Clark, Inc. ("Royster-Clark") (collectively "Defendants") pursuant to Sections 113(b) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92, the New Source Performance Standards ("NSPS") of the Act, 42 U.S.C. § 7411, the Title V Permit requirements of the Act, 42 U.S.C. § 7661, *et seq.*, and the federally approved and enforceable Ohio State Implementation Plan ("Ohio SIP") approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

JURISDICTION AND VENUE

2. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations which constitute the basis of this Complaint occurred in this District and the nitric acid production plant is located and operated by Defendant Agrium U.S. in this District.

NOTICES

4. On October 30, 2006 (with mailing on November 1, 2006), EPA issued Defendants Findings and Notices of Violation ("NOV") for violations of the Act and the Ohio SIP. Pursuant to 42 U.S.C. § 7413(a)(1), EPA provided a copy of each NOV to the State of Ohio.

5. Notice of the commencement of this action has been given to the State of Ohio as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANTS

6. Defendant Royster-Clark is a Delaware corporation. In August 2006, Royster-Clark's wholly owned subsidiary, Royster-Clark Agribusiness, Inc., merged into Royster-Clark. As a result of this merger, Royster-Clark succeeded to all obligations of Royster-Clark Agribusiness, Inc., including the liabilities of Royster-Clark Agribusiness, Inc. at issue in this civil action. Royster-Clark Agribusiness, Inc. owned and operated a nitric acid production

facility located at 10743 Brower Road, Hamiliton County, North Bend, Ohio (hereinafter "North Bend Plant" or "Plant"), and subsequent to the merger Royster-Clark owned and operated the North Bend Plant until it was sold to Agrium U.S. in September 2006.

7. Defendant Agrium U.S. is a Colorado corporation. Agrium U.S. is the current owner and operator of the North Bend Plant, having acquired the Plant through purchase from Royster-Clark in September 2006. As a result of the terms of its acquisition of the Plant, Agrium U.S. has assumed the liabilities of Royster-Clark Agribusiness, Inc. and Royster-Clark at issue in this civil action.

8. The Defendants are each a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

9. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

10. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and

promulgated NAAQS for nitrogen dioxide ("NO_2"), a form of nitrogen oxides (NO_x), and ozone as such pollutants. 40 C.F.R. § 50.11; 40 C.F.R. § 50.9; 40 C.F.R. § 50.10.

11. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

12. At times relevant to this complaint, the North Bend Plant was located in an area that had been classified as attainment or unclassifiable for NO_2. The area was classified as nonattainment for ozone from 1978 until 2000 when it was designated attainment for ozone. In 2002 the area was redesignated nonattainment for the one hour ozone standard and in 2005 it was designated nonattainment for the eight hour ozone standard. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), sets forth requirements relating to the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. These requirements must be followed unless EPA determines, applying criteria set forth in Section 182(f), that such requirements are not necessary and grants a waiver of such requirements for the area. EPA granted such a waiver to the area in which the Facility is located in 1995. This waiver does not extend to the application of the 2005 eight hour ozone rule.

The Prevention of Significant Deterioration Requirements

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as

either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are herein referred to as the "PSD program."

14. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require States to adopt a state implementation plan ("SIP") that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

15. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

16. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

17. On August 7, 1980 (45 Fed. Reg. 52741) EPA disapproved Ohio's proposed PSD program and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Ohio SIP at 40 C.F.R. § 52.1884. On January 29, 1981 (46 Fed. Reg. 9580-01), EPA delegated to Ohio the authority to implement the federal PSD program incorporated into the Ohio SIP. The regulations appearing at 40 C.F.R. § 52.21 were incorporated into and made a part of Ohio's SIP at the time of the construction activities giving rise to this civil action.

18. On October 10, 2001, Ohio received conditional approval for a SIP approved PSD program. 66 Fed. Reg. 51570 (October 10, 2001). Ohio's PSD program was fully approved on January 22, 2003. 68 Fed. Reg. 2909 (January 22, 2003). Ohio's current PSD regulations, which became effective after the construction activities giving rise to this civil action, are located in Ohio Administrative Code ("OAC") 3745-31-01 through 3745-31-20.

19. As set forth at 40 C.F.R. § 52.21(i)(1) (currently 40 C.F.R. § 52.21(a)(2)(iii)) and at times relevant to this case, any major stationary source in an attainment or unclassifiable area that intends to construct a major modification must first obtain a PSD permit.

20. Under the PSD program, "major stationary source" is defined, *inter alia*, as a nitric acid plant which emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

21. Under the PSD program, "Construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8). *See also* 42 U.S.C. § 7479(2)(C) ("construction" includes the "modification" of the source or facility).

22. Under the PSD program, a "major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2). "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) Any

other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i). "Significant" means a rate of emissions for NO_x that would equal or exceed 40 tons per year. 40 C.F.R. § 52.21(b)(23)(i).

23. The PSD regulations at 40 C.F.R. § 52.21(j) also require a source with a major modification in an attainment or unclassifiable area to install and operate best available control technology ("BACT"), as defined in 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant regulated under the Act for which the modification would result in a significant net emissions increase. 42 U.S.C. § 7475(a)(4).

24. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

25. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the implementing regulations at 40 C.F.R. §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification so that such a source can demonstrate, *inter alia*, that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

26. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

New Source Performance Standards

27. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may

emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

28. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such sources. 42 U.S.C. § 7411(a)(2). These standards are known as new source performance standards ("NSPS")

29. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

30. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411 and 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contain general provisions regarding NSPS.

31. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

32. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

33. EPA's general NSPS provisions, referred to in paragraph 30, above, apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including nitric acid production units. NSPS requirements for nitric acid production units for which construction or modification is commenced after August 17, 1971, are codified at 40 C.F.R. Part 60, Subpart G, §§ 60.70-74.

34. The "affected facilities" to which Subpart G applies are each "nitric acid production unit" for which construction or modification is commenced after August 17, 1971. 40 C.F.R. § 60.70.

35. Under Subpart G, "nitric acid production unit" means any facility producing weak nitric acid by either the pressure or atmospheric pressure process. 40 C.F.R. § 60.71(a).

36. "Modification" under NSPS is defined as "any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." 40 C.F.R. § 60.2. Under NSPS, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a).

37. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an "affected facility" for which the applicable NSPS must be satisfied.

38. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

39. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

40. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is a nitric acid production unit must conduct a performance test within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

41. Pursuant to 40 C.F.R. § 60.72, the owner or operator of a nitric acid production unit subject to Subpart G, may not discharge into the atmosphere from the affected facility any gases which contain nitrogen oxides, expressed as NO_2, in excess of 1.5 kg per metric ton of acid produced (3.0 lb per ton), the production being expressed as 100 percent nitric acid (lbs/ton).

42. The Nitric Acid Plant NSPS at 40 C.F.R. § 60.73(a) requires that the source owner or operator install, calibrate, maintain, and operate a continuous monitoring system for

measuring NO_x. 40 C.F.R. § 60.73(c) requires that the owner operator record the daily production rate and hours of operation.

Title V Permit Program

43. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

44. The Ohio Title V program was granted final full approval by EPA, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V operating permit requirements are codified in the Ohio Administrative Code at OAC 3745-77.

45. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. Part 70, as well as the Ohio Title V permit requirements, have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a "major source" except in compliance with a permit issued by a permitting authority under Title V. 40 C.F.R. § 70.1(b); OAC 3745-77-02(A).

46. "Major source" is defined in Section 501 of the Act, 42 U.S.C. § 7661(2), in 40 C.F.R. § 70.2, and in OAC 3745-77-01(W) as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. NO_x is listed as a regulated air pollutant under 40 C.F.R. § 70.2 and OAC 3745-77-01(DD)(1).

47. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), 40 C.F.R. § 70.6a, and OAC 3745-77-07 have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the Act and the requirements of the applicable SIP. "Applicable requirements" include any applicable PSD requirements and any applicable NSPS requirements. 40 C.F.R. § 70.2 and OAC 3745-77-01(H).

48. Section 503 of the Act, 42 U.S.C. § 7661b, 40 C.F.R. § 70.5(a), and OAC 3745-77-03 require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application and to determine all applicable requirements (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certification of compliance with all applicable requirements, information that may be necessary to determine the applicability of other applicable requirements of the Act and a compliance plan for all applicable requirements for which the source is not in compliance. 40 C.F.R. § 70.5(a); OAC 3745-77-03.

49. 40 C.F.R. § 70.5(b) and OAC 3745-77-03(F) each require that any applicant, who fails to submit any relevant facts or who has submitted incorrect information in a permit application, promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

The Ohio SIP General Permit Requirements

50. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the maintenance, implementation and enforcement of

the NAAQS. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Sections 113(a) and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

51. U.S. EPA approved OAC 3745-31 as part of the federally enforceable Ohio SIP on October 31, 1980 (45 Fed. Reg. 72119). This approval included OAC Rule 3745-31-02. On September 8, 1993, U.S. EPA approved revisions to OAC 3745-31 as part of the federally enforceable SIP (58 Fed. Reg. 47211).

52. In accordance with Section 110(a)(2) of the Act, the Ohio SIP, at times relevant to this complaint, has included provisions prohibiting the installation of a new source of air pollutants or the modification of an air containment source without first obtaining a Permit To Install. OAC Chapter 3745-31-02 (A).

53. At times relevant to this complaint, "Modification" was defined by the Ohio SIP general permit requirements as, among other things, any physical change in, or change in the method of operation, of a source of air pollutants that increases the amount of air pollutants emitted (OAC 3745-31-01(E) (October 31, 1980)). In 1993, the definition was changed to any physical change in or change in the method of operation of a source of air pollutants that increases the allowable air contaminant emissions under applicable law. OAC 3745-31-01(E) (September 8, 1993).

54. Pursuant to Sections 113(a) and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

ENFORCEMENT PROVISIONS

55. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

> Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .
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> * * *
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> (C) bring a civil action in accordance with subsection (b) of this section.

56. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that "[e]xcept for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . ."

57. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004,

pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan.

58. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

59. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

GENERAL ALLEGATIONS

60. At all times pertinent to this civil action, either Royster-Clark Agribusiness, Inc., Royster-Clark or Agrium U.S. was an owner and operator of the North Bend Plant.

61. Royster-Clark Agribusiness, Inc. (either under the name Royster-Clark Agribusiness, Inc or under its previous names) owned and operated the North Bend Plant from approximately 1985 until August 2006 when it was liquidated and merged into Royster-Clark, which had owned one hundred percent of Royster-Clark Agribusiness, Inc.'s stock.

62. Royster-Clark owned and operated the North Bend Plant from the aforementioned merger in August 2006 until September 2006 when it sold the Plant to Agrium U.S.

63. Agrium U.S., the current owner and operator of the Plant, has been the owner and operator of the Plant since it acquired the Plant from Royster-Clark in September 2006.

64. Royster-Clark and Agrium U.S. have succeeded to or assumed the liabilities of Royster-Clark Agribusiness, Inc. identified in this complaint. Royster-Clark succeeded to such liabilities through the merger identified in paragraph 61. Agrium U.S. assumed such liabilities (and any independent liabilities of Royster-Clark for its period of ownership and operation) as a result of the terms of its purchase from Royster-Clark.

65. At all times pertinent to this civil action, the North Bend Plant was: a "major emitting facility" and a "major stationary source," within the meaning of the Act and the PSD regulations in the Ohio SIP for NO_x, for purposes of PSD; and a "source of air pollutants" within the meaning of the Ohio SIP Permit To Install requirements. The North Bend Plant's nitric acid production unit is an "affected facility" that is subject to the requirements of NSPS. At all times pertinent to this civil action, the North Bend Plant was a "major source" within the meaning of Title V of the Act, EPA's Title V implementing regulations, and the Ohio Title V program regulations.

66. At times pertinent to this civil action, Royster-Clark Agribusiness, Inc. and later the Defendants have operated at the North Bend Plant an anhydrous ammonia storage tank equipped with a flare which is used intermittently to regulate pressure inside of the tank. When the ammonia storage tank's flare is in operation, it causes the emission of NO_x into the atmosphere.

FIRST CLAIM FOR RELIEF
(PSD Violations)

67. Paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. Royster-Clark Agribusiness, Inc., then known as Vigoro Industries, Inc., commenced construction of a major modification at the North Bend Plant commencing in or about 1990. In or about 1990, a heat train revision was performed on the nitric acid plant. The heat train revision involved redesigning and replacing the plant's heat train. As part of the heat train revision, the air preheater, ammonia converter, turbine gas heater, steam superheater, ammonia/air mixer, tailgas heater, ammonia vaporizer, boiler feedwater economizer, stage 1 boiler, stage 2 boiler, and steam drum were replaced. Subsequent to the heat train revision project, Royster-Clark Agribusiness, Inc. conducted several additional activities between 1991 and 1996 that removed bottlenecks and permitted the plant to operate at a higher production rate than the Plant was able to achieve before the heat train revision described above. These additional activities included: modification of the Secondary Absorber in 1991; upgrade of the Tail Gas Preheater in 1992; upgrade of the Cooler Condenser in 1992; upgrade of the Platinum Filter in 1994; installation of air compressor filters in 1994; upgrade of the Expander Turbine 1996; and replacement of compressor train intercoolers in 1996. The heat train revision project

and the activities following it, which collectively constituted a single modification for purposes of the Act, resulted in significant net emission increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of NO_x.

69. Royster-Clark Agribusiness, Inc. violated Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the Ohio SIP at 40 C.F.R. § 52.1884, by undertaking such major modification and operating the North Bend Plant after the modification without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) (currently 40 C.F.R. § 52.21(a)(2)(iii)) and 52.21(r)(1)). In addition, Royster-Clark Agribusiness, Inc. failed to install and operate BACT for control of NO_x as required by 40 C.F.R. § 52.21(j). Royster-Clark Agribusiness, Inc., then known as Vigoro, failed to provide the permitting authorities with all relevant information necessary to perform an analysis of whether the proposed activities described in Paragraph 68 constituted a "major modification," in violation of the PSD regulations set forth in 40 C.F.R. § 52.21(n) and then incorporated into the Ohio SIP.

70. As a result of the merger identified in paragraph 61, Defendant Royster-Clark has succeeded to the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 69. Royster-Clark is also liable for its failure to comply with Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the applicable PSD regulations while it was an owner and operator of the Plant for the period of time between the merger and the sale of the Plant to Agrium U.S.

71. As a result of the terms of its acquisition of the Plant from Royster-Clark in September 2006, Agrium U.S. assumed the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 69 and Royster-Clark specified in paragraph 70. Agrium U.S. is also liable for its failure to comply with Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the

applicable PSD regulations while it was an owner and operator of the Plant after it acquired the Plant from Royster-Clark in September 2006.

72. Based upon the foregoing, Defendants have violated, and Agrium U.S. continues to violate, Section 165(a) of the Act, 42 U.S.C. Section 7475(a), and applicable PSD provisions of the Ohio SIP. Unless restrained by an order of this Court, this and similar violations of the Act will continue.

73. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violation set forth above subjects Defendants to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

SECOND CLAIM FOR RELIEF
(NSPS violations)

74. Paragraphs 1 through 66 are realleged and incorporated herein by reference.

75. Defendant Agrium U.S. is the current "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a nitric acid production unit, within the meaning of 40 C.F.R. § 60.70, located at the North Bend Plant.

76. The nitric acid production unit is an "affected facility" under Subparts A and G of NSPS and is subject to the NSPS, including provisions of Subpart A and G of the NSPS.

77. Royster-Clark Agribusiness, Inc., while it was the owner or operator of the nitric acid production unit referred to in paragraph 75, commenced the construction activities described in paragraph 68, above. These construction activities increased the maximum hourly emission rate of NO_x from the nitric acid production unit at the North Bend Plant above the maximum hourly emissions achievable at the nitric acid production unit prior to the modification. These construction activities constituted "modification" of an "affected facility" as those terms are defined in the NSPS. 40 C.F.R. §§ 60.2 and 60.14(a).

78. Royster-Clark Agribusiness, Inc., then known as Vigoro, failed to notify EPA of the activities described in paragraph 68, which resulted in modification of the nitric acid production unit at the North Bend Plant in violation of 40 C.F.R. § 60.7.

79. Royster-Clark Agribusiness, Inc., then known as Vigoro, failed to conduct a performance test within 180 days after the activities described in Paragraph 68 and to furnish the EPA a written report of the results, in violation of 40 C.F.R. § 60.8.

80. Since the modification, Royster-Clark Agribusiness, Inc., Royster-Clark and Agrium U.S. have each operated the nitric acid production unit at the North Bend Plant in such a manner that the NO_x emission limitation of 1.5 kg per metric ton of acid produced (3.0 lb per ton) has been exceeded, in violation of 40 C.F.R. § 60.72. Each day that Royster-Clark Agribusiness, Inc., Royster-Clark and Agrium U.S. failed to comply with the NO_x emission limitation constitutes a violation of the federal NSPS regulations, and the Act.

81. Since the modification, Royster-Clark Agribusiness, Inc., Royster-Clark and Agrium U.S. have each operated the nitric acid production unit at the North Bend Plant in violation of 40 C.F.R. § 60.73(a) since it is not equipped with a properly installed, calibrated, and

maintained continuous emission monitor which meets Performance Specification 2 in 40 C.F.R. Part 60 Appendix B.

82. As a result of the merger identified in paragraph 61, Defendant Royster-Clark has succeeded to the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraphs 78 through 81.

83. As a result of the terms of its acquisition of the Plant from Royster-Clark in September 2006, Agrium U.S. assumed the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 78 through 81 and Royster-Clark specified in paragraphs 80 through 82.

84. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendants are subject to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4. Unless enjoined by this Court, Defendant Agrium U.S. will continue to violate the requirements of the NSPS and the Act.

THIRD CLAIM FOR RELIEF
(Title V Permit Program Violations)

85. Paragraphs 1 through 66 are realleged and incorporated herein by reference.

86. At all times relevant to this complaint, the North Bend Plant was a "major stationary source" within the meaning of Section 302(j) of the Act, 42 U.S.C. § 7602(j), and a "major source" as defined at 40 C.F.R. § 70.2.

87. As set forth in paragraph 68 above, Royster-Clark Agribusiness, Inc., then known as Vigoro, commenced a major modification at the North Bend Plant as defined under the PSD regulations in the Ohio SIP. This major modification triggered the requirements to, among other things, undergo BACT determinations, to obtain a PSD permit establishing emission limitations that meet BACT pursuant to such determinations, and to operate in compliance with such limitations.

88. Subsequently, Royster-Clark Agribusiness, Inc. failed to submit a complete application for a Title V operating permit for the North Bend Plant that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including information pertaining to the activities described in paragraph 68, the requirement to meet BACT pursuant to a new BACT determination under PSD and the emission of NO_x from the ammonia flare) in violation of Section 503 of the Act, 42 U.S.C. § 7661b, 40 C.F.R. § 70.5(a) and OAC 3745-77-03.

89. Thereafter, Royster-Clark Agribusiness, Inc. failed to supplement and/or correct its Title V permit application with supplementary facts and corrected information that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including information pertaining to the activities described in paragraph 68, the requirement to meet BACT pursuant to a new BACT determination under PSD and the emission of NO_x from the ammonia flare) in violation of 40 C.F.R. § 70.5(b) and OAC 3745-77-03(F).

90. As a result of its failure to provide complete information in its Title V application or to properly supplement its application, Royster-Clark Agribusiness, Inc. failed to obtain a proper or adequate Title V operating permit for the North Bend Plant that contained emission limitations for NO_x, that met BACT pursuant to a new BACT determination, that met NSPS emission limits, and that contained emission limits for the ammonia flare as required by Section 504(a) of the Act, 42 U.S.C. § 7661c(a). Royster-Clark Agribusiness, Inc., Royster-Clark and Agrium U.S. thereafter operated the North Bend Plant without meeting such limitations and without having a valid operating permit that required compliance with such limitations or that contained a compliance plan for all applicable requirements for which the North Bend Plant was not in compliance. The Defendants' conduct violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.1(b) and OAC 3745-77-02.

91. As a result of the merger identified in paragraph 61, Defendant Royster-Clark has succeeded to the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraphs 88 through 90.

92. As a result of the terms of its acquisition of the Plant from Royster-Clark in September 2006, Agrium U.S. assumed the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 88 through 90 and Royster-Clark specified in paragraphs 90 and 91.

93. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations of Title V set forth above subject Defendants to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004; and up to $32,500 for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation

Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

FOURTH CLAIM FOR RELIEF
(Ohio SIP General Permit Requirement Violations)

94. Paragraphs 1 through 66 are realleged and incorporated herein by reference.

95. Royster-Clark Agribusiness, Inc. commenced construction of a modification, as defined in the Act and the Ohio SIP, at the North Bend Plant. This modification is described in paragraph 68, above.

96. Royster-Clark Agribusiness, Inc., Royster-Clark and Agrium U.S. violated, and Agrium U.S. continues to violate, the Ohio SIP General Permit provisions by, among other things, undertaking such modification at the North Bend Plant and/or operating the modified Plant without obtaining a Permit To Install as required by OAC Section 3745-31-02(A).

97. As a result of the merger identified in paragraph 61, Defendant Royster-Clark has succeeded to the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 96.

98. As a result of the terms of its acquisition of the Plant from Royster-Clark in September 2006, Agrium U.S. assumed the liabilities of Royster-Clark Agribusiness, Inc. specified in paragraph 96 and of Royster-Clark specified in paragraph 96 and 97.

99. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 30, 1997; up to $27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to $32,500 per day for each such violation

occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 99 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendants from operating the nitric acid production unit at the North Bend Plant, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendants to remedy their past violations by, among other things, requiring Defendants to install, as appropriate, the best available control technology, or such other emissions control technology required by law, on the nitric acid production unit at the North Bend Plant for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendants to apply for permits that are in conformity with the requirements of the Clean Air Act and the Ohio SIP General Permit Requirements;

4. Order Defendants to comply with the NSPS provisions of the Act;

5. Assess a civil penalty against Defendants of up to $25,000 per day for each such violation prior to January 30, 1997; up to $27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004; and up to $32,500 for each such violation occurring after March 15, 2004;

6. Award Plaintiff its costs of this action; and,

7. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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